Founded in 1852 by Sidney Davy Miller



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Warsaw • Wrocław

November 20, 2009

Marlene H. Dortch, Secretary Federal Communications Commission 445 12<sup>th</sup> Street, SW Washington, DC 20554 Via Electronic Comment Filing System and United States Mail

Re: In re Michigan Access Petition for Waiver, CC Docket No. 96-45, DA 09-2255 (filed September 30, 2009)

Dear Ms. Dortch,

Enclosed for filing, please find Osirus Communications, Inc.'s Comments to the September 30, 2009 Waiver Petition of Michigan Access. If you should have any questions, please kindly advise.

Very truly yours,

Miller, Canfield, Paddock and Stone, PLC

Michael C. Rampe

MCR/cla Enclosures

# Before the FEDERAL COMMUNICATIONS COMMISSION Washington, DC 20554

In re Petition of	)
MICHIGAN ACCESS, INC.	)
Emergency Petition for Waiver of the Commission's Rules to Designate Michigan Access an Incumbent Local Exchange Carrier in Two Unserved Areas in Northeast Michigan	) ) ) ) ) CC Docket No. 96-45 ) DA 09-2255 )
Petition for Waivers of the Commission's Rules to Allow New Local Exchange Carrier to Participate In NECA Tariffs and Pools and Obtain Accelerated USF Support	) ) )
PROOF OF S	<u>ERVICE</u>
STATE OF MICHIGAN )	
) ss. COUNTY OF INGHAM )	
Crystal L. Abbott, being duly sworn, depose Canfield, Paddock and Stone, P.L.C., and that on <b>COMMUNICATIONS, INC.'S Comments</b> to the Michigan Access in the above captioned proceeding upon:	ne September 30, 2009 Waiver Petition of
SEE ATTACHED S	ERVICE LIST
Service was accomplished by U.S. Mail. Recipients service by e-mail.	whose email address is listed also received
	Crystal L. Abbott
Subscribed and sworn to before me This 20th, day of November, 2009	
Nicole E. Roberts, Notary Public Ingham County, Michigan My Commission expires on April 28, 2014	

### Service List CC Docket No. 96-45

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# Before the FEDERAL COMMUNICATIONS COMMISSION Washington, DC 20554

In re Petition of	)	
	)	
MICHIGAN ACCESS, INC.	)	
	)	
Emergency Petition for Waiver of the	)	
Commission's Rules to Designate Michigan	)	
Access an Incumbent Local Exchange Carrier in	)	CC Docket No. 96-45
Two Unserved Areas in Northeast Michigan	)	DA 09-2255
	)	
Petition for Waivers of the Commission's Rules to	)	
Allow New Local Exchange Carrier to Participate	)	
In NECA Tariffs and Pools and Obtain	)	
Accelerated USF Support	)	

# COMMENTS OF OSIRUS COMMUNICATIONS, INC IN OPPOSITION TO

### **MICHIGAN ACCESS, INC.'s**

EMERGENCY PETITION FOR WAIVER OF THE COMMISSION'S RULES TO DESIGNATE MICHIGAN ACCESS AN INCUMBENT LOCAL EXCHANGE CARRIER IN TWO UNSERVED AREAS IN NORTHEAST MICHIGAN

PETITION FOR WAIVERS OF THE COMMISSION'S RULES TO PERMIT NEW LOCAL EXCHANGE CARRIER TO PARTICIPATE IN NECA TARIFFS AND POOLS AND TO OBTAIN ACCELERATED USF SUPPORT

Harvey J. Messing (P 23309) Michael C. Rampe (P 58189) MILLER, CANFIELD, PADDOCK AND STONE, PLC One Michigan Avenue, Suite 900 Lansing, MI 48933 Phone: (517) 487-2070

Fax: (517) 374-6304

### I. INTRODUCTION AND SUMMARY OF POSITION

Osirus Communications, Inc. (Osirus), through its attorneys, Miller, Canfield, Paddock and Stone, PLC, files these comments in opposition to the September 30, 2009 Petition of Michigan Access Inc. (Michigan Access) in this docket. As fully explained herein, the Commission must deny Michigan Access' Petition because it requests waivers to operate as the incumbent local exchange carrier (ILEC) in areas in which an ILEC already exists, and that are already included in another carrier's study area.

The focus of the Petition is on two particular geographic areas, which Michigan Access' calls the "Kirtland" and "Red Dog" exchanges.<sup>1</sup> However, to the extent that Michigan Access intended for its Petition to pertain to any of the eight areas that are the subject of Osirus' own waiver petition, filed October 2, 2007 (DA 07-4873), Osirus objects to the Petition to such extent as well.

As fully explained in these comments, the Commission must deny Michigan Access' request for waivers of 47 CFR 69.2(hh), 69.3(e)(6), and 69.601. These waivers would permit Michigan Access to participate as a member of the National Exchange Carriers Association (NECA), and operate as an ILEC, in the two areas at issue. Michigan Access, however, is not an ILEC, and Osirus has already established itself as the incumbent carrier in both areas.

The Commission must also deny Michigan Access' request for waivers of §§ 36.611, 36.612, 54.301(b), 54.314(d) and 54.903(a). These rules apply to ILECs that have their own study areas. Not only is Michigan Access not an ILEC, the two areas at

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<sup>&</sup>lt;sup>1</sup> The two areas at issue are located in Ogemaw and Oscoda Counties in Michigan.

issue are already in Osirus' study area. As a result, the Petition does not satisfy the requirements for the relief requested, and must be denied.

### II. BACKGROUND

Michigan Access filed its Petition in the above matter on September 30, 2009. In a Public Notice issued on October 21, 2009, this Commission established a pleading cycle permitting interested parties to file comments on the Petition no later than November 20, 2009.

Michigan Access requests the following:

- Waiver of the term "telephone company" as defined in § 69.2(hh), and as used in § 69.601 of the Commission's rules, and of the annual election filing deadline in § 69.3(e)(6) to permit Michigan Access to become a member of NECA and participate immediately in NECA pools and tariffs;
- A declaratory ruling that a waiver of the definition of "study area" in the Appendix-Glossary of 47 CFR Part 36 is not necessary;
- Waiver of the historical cost requirements set forth in §§ 36.611 and 36.612 of the Commission's rules to allow Michigan Access to receive high cost loop support based on its forecasted or estimated costs; and
- In order to permit Michigan Access to receive high-cost fund (HCF) disbursements in a timely manner, (a) waiver of the state certification deadlines set forth in section 54.314(d); and (b) waiver of the data filing deadlines set forth in sections 54.301(b) and 54.903(a).

As noted above, Osirus also has a Petition pending before the Commission.

Osirus requested the very same waivers that Michigan Access now requests in the 
"Kirtland" and "Red Dog" areas (and six other areas) approximately two years ago.

With respect to the two areas at issue, Osirus, and not Michigan Access, was the first local exchange carrier (LEC) in Michigan to (i) apply for a license from the Michigan

Public Service Commission (MPSC) to serve the previously unserved areas, (ii) obtain a MPSC license to serve both areas, (iii) receive the MPSC's designation as an eligible telecommunications carrier (ETC), and (iv) file the appropriate waiver petition with this Commission. The two areas at issue became established within Osirus' study area upon Osirus' receipt of its MPSC license to serve those areas, thereby precluding Michigan Access' subsequent claims to the same areas.

The Commission must therefore deny Michigan Access' Petition. The Commission should instead grant Osirus' own Petition, which will permit Osirus to provide high quality basic and advanced services at reasonable rate levels to all eight of the previously unserved areas in its service territory.

### III. MICHIGAN ACCESS IS NOT ENTITLED TO THE REQUESTED WAIVERS

# A. The Commission Must Deny the Petition Because Michigan Access is Not the Incumbent Carrier in the Areas at Issue.

Michigan Access is not even licensed to provide basic local exchange service in the "Kirtland" or "Red Dog" areas, or any other unserved areas. The MPSC Order granting Michigan Access' license, appended as Attachment 1, states that Michigan Access requested to serve "all exchanges and zones throughout the state of Michigan." The Order is silent regarding unserved areas. Ordering clause A. states only that "Michigan Access, Inc., is granted a license to provide basic local exchange service in all exchanges and zones throughout the state of Michigan."

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 $<sup>^{2}</sup>$  August 22, 2006 Order of the MPSC in Case No. U-14896 (Attachment 1).

<sup>&</sup>lt;sup>3</sup> *Id.*, p 3.

The Michigan Telecommunications Act (MTA) defines "exchange" as "1 or more contiguous central offices and all associated facilities within a geographical area in which basic local exchange service is offered by a provider." An exchange, therefore, is a geographic area served by a LEC's central office. "Zone" is not defined in the MTA, but is defined in LEC tariffs. Consequently, in granting Michigan Access a license to serve all "exchanges and zones" in Michigan, the MPSC only licensed Michigan Access to serve existing exchanges and zones, as defined in ILEC tariffs. The MPSC did not license Michigan Access to serve any undefined, unserved areas.

Section 302(1)(a) of the MTA requires a license applicant to demonstrate that:

The applicant possesses sufficient technical, financial, and managerial resources and abilities to provide basic local exchange service within the geographic area of the license and that the applicant intends to provide service within 1 year from the date the license is granted.[5]

Thus, if Michigan Access had desired to serve any unserved areas, it would have had to prove to the MPSC that it had the necessary resources and abilities to do so. The MPSC would have evaluated Michigan Access' ability, if any, to construct an entirely new LEC network in areas where none previously existed. Neither Michigan Access' application, nor the MPSC's Order, address the matter.

The term "Zone" means a unit established for the administration of local telephone service in a specified area which usually embraces a city, town or village and its environs. It consists of one or more central offices together with all associated plant used in furnishing communications service within that area.

Tariff MPSC No. 20R, Part 2, § 1, Original Sheet No. 13.

<sup>&</sup>lt;sup>4</sup> For example, Michigan Bell Telephone Company, d/b/a AT&T Michigan, defines "zone" as follows:

<sup>&</sup>lt;sup>5</sup> MCL 484.2302(1)(a) (emphasis added).

In its license application, Michigan Access described the geographic scope of its license request as follows:

Michigan Access proposes to offer basic local exchange service throughout the State of Michigan. Initially, Michigan Access intends to provide its services in those areas in which AT&T Michigan, Verizon North Inc., and Contel of the South, Inc. d/b/a Verizon North Systems and other local exchange carriers are the incumbent LECs. The local calling areas for Michigan Access's customers will correspond to these carriers' exchange Michigan Access will serve the exchanges as mapped and described by the above listed incumbent LECs. This means that Michigan Access's customers will have the same local calling area as if they remained customers of the incumbent carriers. Michigan Access intends to mirror the map and legal description sections of the tariffs filed by the incumbent LECs for the exchanges it proposes to serve. Michigan Access understands that any future modifications to these exchange boundaries or legal descriptions of these boundaries will be automatically mirrored by Michigan Access on a going forward basis. If not mirrored, new detailed maps and legal descriptions, on an individual exchange basis will be filed with the Commission for approval. [6]

Although the paragraph's preamble mentioned a general intent to provide service "throughout the State of Michigan," its specific reference to only existing ILEC areas indicated only an intent to operate as a CLEC. The MPSC therefore granted Michigan Access a license to serve all "exchanges and zones" in Michigan, but not any unserved areas.

Michigan Access emphasized throughout its license application its plan to compete with ILECs. The application refers to Michigan Access as a "competitive local exchange carrier," and indicates no intent to function as an ILEC anywhere.<sup>7</sup> The public notices that Michigan Access issued of its application confirmed its intent "to

<sup>&</sup>lt;sup>6</sup> May 17, 2006 Application in Case No. U-14896, p 3. Michigan Access' Application can be viewed online on the MPSC website at: <a href="http://efile.mpsc.state.mi.us/efile/viewcase.php?casenum=14896">http://efile.mpsc.state.mi.us/efile/viewcase.php?casenum=14896</a>.

<sup>&</sup>lt;sup>7</sup> *Id*.

provide its services in those areas in which AT&T Michigan, Verizon North Inc., Contel of the South, Inc. d/b/a Verizon North Systems and other local exchange carriers are the incumbent local exchange carriers."<sup>8</sup>

Because of the requirements of § 302(1)(a) of the MTA, license applicants are very specific in their requests to serve unserved areas. For example, when Allband Communications Cooperative requested a license for the unserved area now known as the Robb's Creek exchange, it specifically requested to serve a "proposed exchange service territory," for which it provided a detailed geographic description.<sup>9</sup> Huron Mountain Communications Co. and ACD Telecom of the North, LLC, also made specific requests for licenses in unserved areas, and specifically identified the geographic boundaries of the unserved areas.<sup>10</sup> Osirus likewise specifically requested, and was granted, authority to serve eight specific unserved areas, including the "Kirtland" and "Red Dog" areas.<sup>11</sup>

Tellingly, Michigan Access' refers to itself as a CLEC in its online local exchange service tariff.<sup>12</sup> To "identify its service territory," Michigan Access incorporates ILEC

<sup>&</sup>lt;sup>8</sup> July 6, 2006, Notice of Hearing in Case No. U-14896.

<sup>&</sup>lt;sup>9</sup> Allband's July 8, 2004 Application in Case No. U-14200 can be viewed online at the MPSC's website at: <a href="http://efile.mpsc.state.mi.us/efile/viewcase.php?casenum=14200">http://efile.mpsc.state.mi.us/efile/viewcase.php?casenum=14200</a>.

<sup>&</sup>lt;sup>10</sup> Huron Mountain Communications' April 22, 2008 Application in Case No. U-15548 can be viewed on the MPSC website at: <a href="http://efile.mpsc.state.mi.us/efile/viewcase.php?casenum=15548">http://efile.mpsc.state.mi.us/efile/viewcase.php?casenum=15548</a>. ACD Telecom of the North's March 4, 2009 Application in Case No. U-15911 can be viewed on the MPSC website at <a href="http://efile.mpsc.state.mi.us/efile/viewcase.php?casenum=15911">http://efile.mpsc.state.mi.us/efile/viewcase.php?casenum=15911</a>.

<sup>&</sup>lt;sup>11</sup> October 9, 2007 Order in MPSC Case No. U-15356. Osirus' Application and the Commission's Order can be viewed online at: http://efile.mpsc.cis.state.mi.us/efile/viewcase.php?casenum=15356.

<sup>&</sup>lt;sup>12</sup>Tariff MPSC No. 1, Section 5, <a href="http://www.michiganaccess.com/Tariff/default.htm">http://www.michiganaccess.com/Tariff/default.htm</a> (last visited November 10, 2009).

maps, boundary descriptions, and local calling areas. In contradiction of its claimed incumbent status, Michigan Access' specifically names Osirus as the "Independent Incumbent Local Exchange Carrier" in the eight areas that are the subject of Osirus' pending petition, and including the "Kirtland" and "Red Dog" areas. As indicated in Attachment 2, Michigan Access' tariff did not even include Osirus' ILEC areas until August 12, 2009 (and despite not having a license to do so). Michigan Access also described itself as a "Competitive Local Exchange Carrier (CLEC)," rather than as an incumbent, in its recent application requesting ETC status from the MPSC. Thus, despite Michigan Access' posturing as an established carrier in Osirus' ILEC areas, it very clearly is not.

Michigan Access' purported preparedness to serve the unserved areas is also unpersuasive. Osirus has interconnection agreements with AT&T Michigan, Verizon North Inc. and Contel of the South, Inc. Osirus' affiliate, CynergyComm.Net, Inc. (f/k/a United Telecomm, Inc.) has an extensive telecommunications network, which it

<sup>&</sup>lt;sup>13</sup> Tariff MPSC No. 1, Section 5, Page 16.7. See Attachment 2.

<sup>&</sup>lt;sup>14</sup> September 11, 2009 Application in Case No. U-16085, p 2. The Application can be reviewed on the MPSC website at: http://efile.mpsc.state.mi.us/efile/viewcase.php?casenum=16085.

<sup>&</sup>lt;sup>15</sup> See Petition, p 12. See also September 18, 2009 letter of Michigan Access, Inc. and Custom Software, Inc. d/b/a M33 Access, filed with the Commission in DA 07-4873, wherein Michigan Access refers to itself as the ILEC in the two areas at issue.

<sup>&</sup>lt;sup>16</sup> See Petition, p 12.

 $<sup>^{17}</sup>$  October 18, 2005 Order in MPSC Case No. U-14628; October 9, 2007 Order in MPSC Case No. U-14768.

<sup>&</sup>lt;sup>18</sup> January 31, 2006 Order in MPSC Case No. U-14748.

has been using to provide service in Northern Michigan since August 2001. Osirus has already received ETC designation, whereas Michigan Access only recently applied for such status. Osirus is eager to bring service to the two areas, and has received all required MPSC approvals. Osirus is patiently awaiting this Commission's approval of its own waiver petition.

Even if Michigan Access later acquires the necessary MPSC license, it can at best only ever be a CLEC in the two areas. The rules from which Michigan Access requests a waiver apply only to incumbent carriers and their participation in NECA. Because Osirus, and not Michigan Access, is the ILEC in the two areas, the Commission must deny the waiver requests.

# B. The Commission Must Deny the Petition Because the "Kirtland" and "Red Dog" Areas are in Osirus' Study Area.

As an initial matter, the request for waivers of §§ 36.611, 36.612, 54.301(b), 54.314(d), and 54.903(a), is premature. Those sections apply only to LECs that have received ETC designation. Michigan Access has not yet received ETC designation.

Even if Michigan Access' waiver request were ripe for review, the Commission would have to deny it because §§ 36.611, 36.612, 54.301(b), and 54.903(a) apply to ILECs with study areas. As discussed above, Osirus is not an ILEC, and as explained below, Michigan Acess has no study area. The two areas are in Osirus' study area.

Osirus requested a license from the MPSC to provide local exchange service in eight previously unserved areas located in the Lower Peninsula of Michigan on July 27,

2007.<sup>19</sup> The MPSC granted Osirus a temporary license<sup>20</sup> to serve the eight unserved areas on September 18, 2007, and a permanent license<sup>21</sup> in an order dated October 9, 2007. No other local exchange carrier was licensed to serve the eight unserved areas when the MPSC granted Osirus its license. In an order dated December 18, 2007, the MPSC designated Osirus as an ETC in the eight previously unserved areas.<sup>22</sup> See Attachment 3.

In 1996, the Common Carrier Bureau (now the Wireline Competition Bureau), concluded that no waiver of the Commission's study area freeze was required in the following three circumstances:<sup>23</sup>

- (a) a separately incorporated company is establishing a study area for previously unserved territory;
- (b) a company is combining previously unserved territory with one of its existing study areas in the same state; and
- (c) a holding company is consolidating existing study areas in the same state.

As reflected in Osirus' own pending Petition, Osirus was not required to obtain a study area waiver from the Commission because it qualified under exception (a) as a

<sup>&</sup>lt;sup>19</sup> Documents filed in the MPSC's electronic docket in Case No. U-15356 can be viewed at: http://efile.mpsc.cis.state.mi.us/efile/viewcase.php?casenum=15356.

<sup>&</sup>lt;sup>20</sup> September 18, 2007 in MPSC Case No. U-15356. Under the Michigan Telecommunications Act, the MPSC may issue a temporary license to provide local exchange service pending its determination of a license application. MCL 484.2301(2).

<sup>&</sup>lt;sup>21</sup> October 9, 2007 Order in Case No. U-15356.

<sup>&</sup>lt;sup>22</sup> December 18, 2007 Order in Case No. U-15360. See Attachment 3.

<sup>&</sup>lt;sup>23</sup> In re Request for Clarification by the National Exchange Carriers Association et al. Concerning the Definition of Study Area, 11 FCC Rcd 8646; 1996 WL 15396 (rel'd July 16, 1996), ¶ 9.

separately incorporated company that established a study area for previously unserved areas.<sup>24</sup>

In the Commission's *WeavTel Order*,<sup>25</sup> WeavTel was "a LEC formed under the laws of the state of Washington in 1996" and proposed to serve a previously unserved area.<sup>26</sup> Beaver Creek was a new LEC formed in 2004 or earlier to serve some separate unserved areas.<sup>27</sup> The Washington Utilities and Transportation Commission authorized both carriers to serve their respective unserved areas.<sup>28</sup> Citing exception (a) above, the Commission concluded that neither company was required to obtain a study area waiver for its operations in the unserved areas:

In the 2004 Skyline Order, the Commission clarified that a carrier must apply for a study area waiver if it seeks to create a new study area within one or more existing study areas. The record demonstrates that the areas in which WeavTel and Beaver Creek intend to construct and operate new exchanges are not within the study area of any incumbent LEC. Accordingly, because WeavTel and Beaver Creek do not intend to create a new study area from within one or more existing study areas, and because they are separately incorporated companies establishing study areas for previously unserved areas, no study area waivers are required to establish new study areas for their proposed exchanges. [29]

<sup>&</sup>lt;sup>24</sup> Osirus is not aware that the Commission has ever explained the meaning of "separately incorporated company." However, under the Commission's rulings, the fact that a company is incorporated to serve a previously unserved area is sufficient to satisfy exception (a).

<sup>&</sup>lt;sup>25</sup> In re Waiver Petitions of Westgate Communications LLC d/b/a WeavTel and Beaver Creek Telephone Co, 20 FCC Rcd 13,573; 2005 WL 1923578 (rel'd August 11, 2005).

<sup>&</sup>lt;sup>26</sup> *Id.*, ¶ 2.

<sup>&</sup>lt;sup>27</sup> *Id.*, ¶ 5.

<sup>&</sup>lt;sup>28</sup> *Id.*, ¶¶ 2, 5.

 $<sup>^{29}</sup>$  *Id.*, ¶ 13 (footnotes omitted; emphasis added).

Osirus, like WeavTel and Beaver Creek, did not create a new study area from within one or more existing study areas, and is a separately incorporated company that established a study area for previously unserved areas. Thus, Osirus was not required to obtain a study area waiver, and the eight previously unserved areas were established within Osirus' study area when the MPSC licensed Osirus to serve those areas.<sup>30</sup>

In the Commission's *Adak Order*,<sup>31</sup> it issued a ruling similar to the *WeavTel Order*. The *Adak Order* clarified that a LEC must file a study area waiver request <u>only</u> when it seeks to create a new study area out of one or more existing study areas.<sup>32</sup> When an area has never received service from a certificated LEC or designated ETC, and is not within any existing study area, no study area waiver is required.<sup>33</sup>

Consistent with the *WeavTel* and *Adak Orders*, Osirus has already established the unserved "Kirtland" and "Red Dog" areas within its study area. Thus, Michigan Access wrongly claims that its "proposed study area has never been part of an existing study area."

The Commission must therefore deny Michigan Access' request for a declaration that the "Kirtland" and "Red Dog" areas are within Michigan Access' study area. Michigan Access cannot claim another carrier's study area as its own.

 $<sup>^{30}</sup>$  In re South Park Telephone Co, Petition for Waiver, 13 FCC Rcd 198; 1997 WL 796385 (rel'd December 31, 1997) ¶ 14 (noting that a LEC's service territory is its study area). Osirus' service territory, as set forth in the MPSC's licensing orders, includes the 8 previously unserved areas, and hence they became established within Osirus' study area.

<sup>&</sup>lt;sup>31</sup> In re Adak Eagle Enterprises, LLC Petition for Waivers, 20 FCC Rcd 20,543; 2005 WL 3590909 (rel'd December 30, 2005).

<sup>&</sup>lt;sup>32</sup> Adak Order, fn 21 (citing In re M&L Enterprises, Inc. d/b/a Skyline Telephone Co, Petition for Waivers, 19 FCC Rcd 6761; 2004 WL 770186 (rel'd April 12, 2004)).

<sup>&</sup>lt;sup>33</sup> Adak Order, ¶ 6.

<sup>&</sup>lt;sup>34</sup> Petition, p 18.

As a competitive ETC, Michigan Access is not entitled to the requested relief. A competitive ETC, like Michigan Access, is entitled to universal service support to the extent that it captures an ILEC subscriber line or serves a new customer, and its support is determined with reference to the incumbent ETC's support.<sup>35</sup> Thus, the Commission should deny Michigan Access' requested waiver of 47 CFR 36.611, 36.612, 54.314(d), 54.301(b) and 54.903(a), because they do not apply to competitive ETCs.

## C. If any Petition Deserves Expedited Treatment, it Should be

Osirus and Michigan Access agree that a Commission decision is necessary to permit unserved customers to begin receiving service. However, Osirus, rather than Michigan Access, is the carrier whose petition the Commission should grant.

The claimed urgency for expedited review is that Michigan Access cannot obtain telephone numbers without this Commission's designation as an ILEC. Michigan Access, however, is in no different position than Osirus. Osirus has been awaiting a ruling on its own waiver Petition for approximately two years. Thus, the urgent need for FCC action pertains more to Osirus, than to Michigan Access. The unserved people mentioned in Michigan Access' Petition are the same people who Osirus has been planning to serve for over two years.

Osirus has incurred significant costs to ready itself to serve the eight unserved areas. The longer the Commission waits to grant Osirus' Petition, the more likely other

<sup>&</sup>lt;sup>35</sup> *Id.* 

carriers, reacting to the allure of federal stimulus funding, will make unmeritorious filings like Michigan Access has done.<sup>36</sup>

#### **CONCLUSION** III.

The Commission should deny Michigan Access' Petition. It requests waivers that would be appropriate only if Michigan Access were the incumbent LEC in the two areas, which it is not. The waivers would also only be proper if the areas at issue were not currently within another carrier's study area; the two areas are within Osirus' study area.

Respectfully submitted,

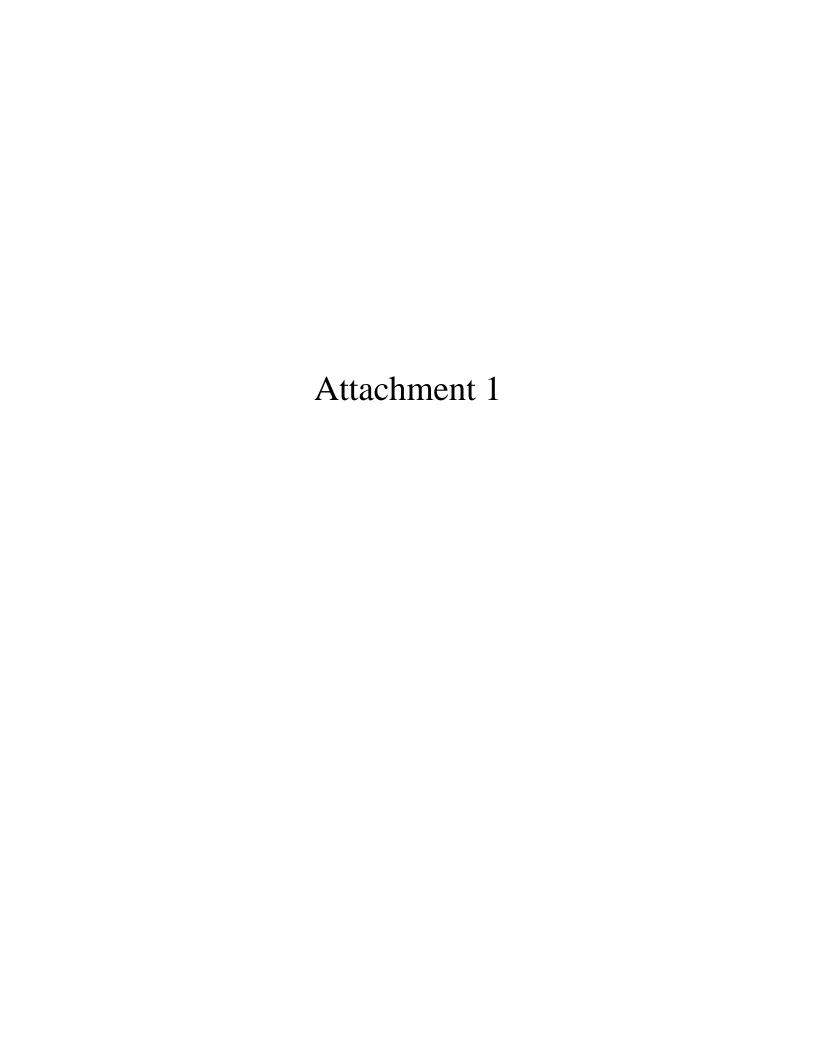
MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

Harvey J. Messing (P23309) Michael C. Rampe (P58189) Attorneys for Osirus Communications, Inc. One Michigan Avenue, Suite 900 Lansing, MI 48933-1609 (517) 487-2070 rampe@millercanfield.com

Dated: November 20, 2009

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 $<sup>^{36}</sup>$  Michigan Access' desire to obtain federal stimulus funding, which it mentions throughout its September 18, 2009 letter filed with the Commission in response to Osirus' Petition, appears to be the motivation behind its recent interest in the unserved areas. Osirus, on the other hand, initiated the steps to obtain all regulatory approvals to serve the unserved areas in 2007, long before the lure of stimulus funding.



#### STATE OF MICHIGAN

#### BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

\* \* \* \* \*

In the matter of the application of	)	
MICHIGAN ACCESS, INC., for temporary and	)	
permanent licenses to provide local exchange	)	Case No. U-14896
services in all zone and exchange areas throughout	)	
the state of Michigan.	)	
	)	

At the August 22, 2006 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. J. Peter Lark, Chairman Hon. Laura Chappelle, Commissioner Hon. Monica Martinez, Commissioner

#### **ORDER**

On May 17, 2006, Michigan Access, Inc., filed an application, pursuant to the Michigan Telecommunications Act (MTA), MCL 484.2101 *et seq.*, for a license to provide basic local exchange service in all exchanges and zones throughout the state of Michigan. On June 27, 2006, Michigan Access received a temporary license.

At a hearing on August 2, 2006, Michigan Access presented the testimony and exhibits of Glenn Wilson, President. At the close of the hearing, the parties waived compliance with the provisions of Section 81 of the Michigan Administrative Procedures Act, MCL 24.281. Shortly following the hearing, it was discovered that Michigan Access, Inc., had inadvertently failed to notice two entities that should have been noticed. A letter was sent to those entities to complete noticing requirements. Interventions were due for the original notice on July 29, 2006. The

August 8, 2006 letter asked for any comments or concerns to be filed by August 21, 2006. No comments were received.

After a review of the application and testimony, the Commission finds that approval of the application is in the public interest. On numerous occasions, the Commission has found that competition can be advantageous to the citizens of this state. Approval of the request for a license to provide basic local exchange service will expand the opportunities for competition.

Accordingly, the application should be approved. The grant of a license is conditioned on full compliance with the provisions of the MTA, as well as the anti-slamming procedures adopted in Case No. U-11900 and the number reclamation process adopted in Case No. U-12703. Failure to comply fully may result in revocation of the license or other penalties. Further, the grant of a license is conditioned upon the provision of service to customers within a reasonable time. Failure to do so may result in revocation of the license. Finally, the Commission notes that any numbers obtained by the applicant are a public resource and are not owned by the applicant. Consequently, if the applicant fails to provide service or goes out of business, any numbers assigned to it are subject to reclamation.

#### The Commission FINDS that:

- a. Jurisdiction is pursuant to 1991 PA 179, as amended, MCL 484.2101 *et seq.*; 1969 PA 306, as amended, MCL 24.201 *et seq.*; and the Commission's Rules of Practice and Procedure, as amended, 1999 AC, R 460.17101 *et seq.*
- b. Michigan Access possesses sufficient technical, financial, and managerial resources and abilities to provide basic local exchange service to all residential and commercial customers within the geographic area of the license and intends to provide service within one year from the date of this order.

c. Granting Michigan Access a license to provide basic local exchange service in the requested areas will not be contrary to the public interest.

### THEREFORE, IT IS ORDERED that:

A. Michigan Access, Inc., is granted a license to provide basic local exchange service in all exchanges and zones throughout the state of Michigan.

B. Michigan Access, Inc., shall provide basic local exchange service in accordance with the regulatory requirements specified in the Michigan Telecommunications Act, MCL 484.2101 *et seq.*, including the number portability provisions of Section 358, the anti-slamming procedures adopted in Case No. U-11900, and the number reclamation process adopted in Case No. U-12703.

C. Before commencing basic local exchange service, Michigan Access, Inc., shall submit its tariff reflecting the services that it will offer and identifying the exchanges in which it will offer service.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so by the filing of a claim of appeal in the Michigan Court of Appeals within 30 days of the issuance of this order, pursuant to MCL 484.2203(12).

# MICHIGAN PUBLIC SERVICE COMMISSION

	/s/ J. Peter Lark Chairman
( S E A L)	
	/s/ Laura Chappelle Commissioner
By its action of August 22, 2006.	/s/ Monica Martinez Commissioner
/s/ Mary Jo Kunkle Its Executive Secretary	

Any party desiring to appeal this order must do so by the filing of a claim of appeal in the Michigan Court of Appeals within 30 days of the issuance of this order, pursuant to MCL 484.2203(12).

	MICHIGAN PUBLIC SERVICE COMMISSION
	Chairman
	Commissioner
By its action of August 22, 2006.	Commissioner
Its Executive Secretary	

# PROOF OF SERVICE

STATE OF MICHIGAN	)	
		Case No. U-14896
County of Ingham	)	
Patricia A. Fronta being du	ıly sworn, depose	s and says that on August 22 <sup>nd</sup> 2006, A.D. she
served a copy of the attach	ned Commission	order by first class mail, postage prepaid, or by
inter-departmental mail, to	the persons as s	shown on the attached service list.
		Patricia Fronta
		i autera i tonta
Subscribed and sworn to this 22 <sup>nd</sup> day of August 2		
Sharron A. Allen	atv. MI	
Notary Public, Ingham Cour My Commission Expires Au	•	

## SERVICE LIST CASE NO. U-14896

MICHIGAN ACCESS, INC. THE LAW OFFICE OF GARY L. FIELD, PLLC ASSISTANT ATTORNEY GENERAL 915 N. WASHINGTON AVE. LANSING, MI 48906

MS. KRISTIN M. SMITH 6545 MERCANTILE WAY, 2<sup>ND</sup> FLOOR SUITE 15 LANSING, MI 48911 ID MAIL

MR. GARY L. FIELD THE LAW OFFICE OF GARY L. FIELD, PLLC PSC - ALJ DIVISION 915 N. WASHINGTON AVE. LANSING, MI 48906

MR. DANIEL E. NICKERSON, JR. 6545 MERCANTILE WAY, 2<sup>ND</sup> FLOOR LANSING, MI 48911 ID MAIL

# SUBSCRIPTION LIST ALL COMMUNICATION ORDERS

MR. DON EITNIEAR
DIT – TELECOMMUNICATIONS DIV.
HANNA BUILDING, FIRST FLOOR
LANSING MI ID MAIL

MR. MICHAEL BYRNE SENATE DEMOCRATIC STAFF ROMNEY BUILDING LANSING MI **ID MAIL** 

.

# Attachment 2

### **SECTION 5 SERVICE AREAS, CONT'D**

### 5.1 Legal Descriptions and Maps, Cont'd

Exchange Independent Incumbent Local Exchange Carrier

Waldron Telephone Company

Westphalia Telephone Company

Winn Telephone Company

Alcona - Central\* Osirus Communications Inc. Alcona - Eastern\* Osirus Communications Inc. Cheboygan \* Osirus Communications Inc. Gladwin\* Osirus Communications Inc. Oscoda\* Osirus Communications Inc. Osirus Communications Inc. Oscoda-Ogemaw \* Presque Isle\* Osirus Communications Inc. Osirus Communications Inc. Presque Isle-Montmorency\*

**RECEIVED** 

By seawrightp at 10:23 am, Aug 18, 2009

<sup>\*</sup> The Commission granted Osirus Communications, Inc. to serve those previously unserved territories in Case No. U-15356. Osirus has not divided those territories into exchanges. The Company will follow the incumbent local exchange carrier's exchange and zone maps. The Company will also revise the tariff to match the incumbent carrier's exchange description, local calling areas, villages and townships of each exchange.

# Attachment 3

#### STATE OF MICHIGAN

#### BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

\* \* \* \* \*

In the matter of the application of	)	
OSIRUS COMMUNICATIONS, INC.,	)	
for a license to provide basic local exchange	)	Case No. U-15356
services in eight currently unserved areas in	)	
the lower peninsula of Michigan.	)	
	)	

At the October 9, 2007 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Orjiakor N. Isiogu, Chairman

Hon. Monica Martinez, Commissioner Hon. Steven A. Transeth, Commissioner

#### **OPINION AND ORDER**

Osirus Communications, Inc. (Osirus), was granted a license to provide basic local exchange service in the August 1, 2005 order in Case No. U-14494. On July 27, 2007, Osirus filed an application, under the Michigan Telecommunications Act (MTA), MCL 484.2101 *et seq.*, to permanently expand its license to provide basic local exchange service to eight currently unserved areas in Gladwin, Presque Isle, Montmorency, Oscoda, Cheboygan, Ogemaw, and Alcona counties in the lower peninsula of Michigan. Osirus seeks authority to serve only territories within these counties that are currently unassigned and have no access to wireline phone service. Osirus was granted a temporary license expansion on September 18, 2007.

Osirus served a notice of opportunity to comment on other local exchange carriers and all county clerk offices. The comment due date was September 25, 2007. The following three comments were filed with the Commission:

- 1. Jack Decker commented that Allband Communications Cooperative has filed an application to serve some of the same exchanges, and requests that the Commission not designate either company as the incumbent local exchange carrier (ILEC) until service is offered. He also requested that the Commission question Osirus as to whether it will offer local calling service to adjacent exchanges, and whether broadband service will be offered.
- 2. Verizon commented that Osirus may not have the equipment necessary to interconnect at Verizon's chosen location.
- Gary Brooks commented that Osirus will provide superior service and urges the Commission to grant the expansion.

Issues regarding ILEC status and the array of services to be offered, or interconnection negotiation terms, are not relevant to this licensing proceeding, which addresses only whether the company will be granted the opportunity to provide service.

The Commission finds that approval of Osirus' application is in the public interest. The expansion of the license is conditioned on compliance with the anti-slamming procedures adopted in Case No. U-11900, the number portability provisions of the MTA, and the number reclamation process adopted in Case No. U-12703. Further, the expansion of the license is conditioned upon the provision of service to customers in the added exchanges within a reasonable time. Failure to comply fully with those procedures may result in revocation of the license or other penalties.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1991 PA 179, as amended, MCL 484.2101 *et seq.*; 1969 PA 306, as amended, MCL 24.201 *et seq.*; and the Commission's Rules of Practice and Procedure, as amended, 1999 AC, R 460.17101 *et seq.* 

b. Amending Osirus' license to provide basic local exchange service is in the public interest.

### THEREFORE, IT IS ORDERED that:

A. The license of Osirus Communications, Inc., to provide basic local exchange service is amended to include eight currently unserved areas in Gladwin, Presque Isle, Montmorency, Oscoda, Cheboygan, Ogemaw, and Alcona counties described in its application.

B. Osirus Communications, Inc., shall provide basic local exchange service in accordance with the regulatory requirements specified in the Michigan Telecommunications Act, MCL 484.2101 *et seq.*, including the number portability provisions of Section 358, the antislamming procedures adopted in Case No. U-11900, and the number reclamation process adopted in Case No. U-12703.

C. Before commencing basic local exchange service in the areas added to the license by this order Osirus Communications, Inc., shall submit its tariff reflecting the services that it will offer and identifying the additional exchanges in which it will offer service.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so by the filing of a claim of appeal in the Michigan Court of Appeals within 30 days of the issuance of this order, pursuant to MCL 484.2203(12).

MICHIGAN PUBLIC SERVICE COMMISSION

	WICHGAN TOBLIC SERVICE COMMISSION
	/s/ Orjiakor N. Isiogu Chairman
(SEAL)	
	/s/ Monica Martinez Commissioner
	/s/ Steven A. Transeth Commissioner
By its action of October 9, 2007.	
/s/ Mary Jo Kunkle Its Executive Secretary	

Any party desiring to appeal this order must do so by the filing of a claim of appeal in the Michigan Court of Appeals within 30 days of the issuance of this order, pursuant to MCL 484.2203(12).

	MICHIGAN PUBLIC SERVICE COMMISSIO
	Chairman
	Commissioner
	Commissioner
By its action of October 9, 2007.	
Its Executive Secretary	

# PROOF OF SERVICE

STATE OF MICHIGAN	)	
		Case No. U-15356
County of Ingham	)	
<b>,</b>	,	
E. David Lechler being duly	sworn, deposes and say	rs that on October 9 <sup>th</sup> , 2007, A.D. he served a
copy of the attached Commis	sion order by first class r	nail, postage prepaid, or by inter-departmental
mail, to the persons as shown	on the attached service	list.
		E. David Lechler
Subscribed and sworn to be	form ma	Zi Buviu Zeemer
this 9 <sup>th</sup> day of October 2007		
William Brandon Notary Public - State of Mic	chigan	
County of Ingham		
My Commission Expires Ja		
Acting in the County of Ingl	18111	

SERVICE LIST FOR DOCKET # U - 15356- CASE # DATE OF PREPARATION: 10/09/2007

\_\_\_\_\_\_

MS. SHERRIE MAN
OSIRUS COMMUNICATIONS, INC.
212 E. GRAND RIVER AVE.
LANSING MI 48906

MR. HAI JIANG LOOMIS EWERT PARSLEY DAVIS & GOTTING 232 S. CAPITOL AVENUE SUITE 1000 LANSING MI 48933

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